



UNIVERSITY OF
TORONTO
FACULTY OF LAW



ADMINISTRATIVE LAW


VOLUME 1

Leslie McIntosh & Ron Foerster

STORAGE

Spring 2009

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Leslie McIntosh & Ron Foerster

Spring 2009

ADMINISTRATIVE LAW SPRING SEMESTER 2008

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Class Hours: Tuesdays and Thursdays, 8:30am-10:30am

Overview

Administrative law is the study of how governments and administrative tribunals may affect the rights and interests of individuals and groups, as well as the role of the courts in superintending governmental action. Administrative law issues arise in a diverse range of settings, including immigration and refugee law, labour law, health law, human rights law, environmental law, securities, banking and competition regulation, professional discipline, and decision-making in universities, hospitals and municipalities. The course will consider the rules and principles applicable to various kinds of decision-makers including government ministers, officials, administrative boards and tribunals, agencies and commissions. Specific topics include: the rule of law, procedural fairness considerations that govern investigation, rule-making, and adjudication by administrative agencies, the right to a hearing and the law of bias, the standard of review of decisions of governmental actors, remedies for abuse of discretion, and the application of the Charter and constitutional principles in the administrative realm. Throughout the course the overriding questions will be: How is the public interest to be determined? How should the protection of individual and group rights and interests be balanced against the goals asserted by the government or agency?

Texts

There is case book, McIntosh & Foerster, *Administrative Law*, 2009. The syllabus sets out the cases. Specific readings will be assigned in class or by Blackboard postings.

Blackboard

There will be a Blackboard page for this course. Readings may be assigned by Blackboard and hand-outs may be posted on the Blackboard.

Recommended Reading

For those seeking additional readings, the following sources are recommended:

- Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008, Emond Montgomery Publications Limited, Toronto)
- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Blake, *Administrative Law in Canada*, (3rd ed. Butterworths, 2001) (Canada)
- Bryant & Sossin, *Public Law* (Toronto: Carswell, 2002)

Evaluation

There will be a final, 3-hour open-book examination (100%).

Course Outline

All page references are to the 2009 Administrative Law Case Book (CB), by volume number (CB I, CB II, CB III).

CLASS #1 - TUESDAY, JANUARY 6

Introduction to Administrative Law

CLASS #2 - THURSDAY, JANUARY 8

I. Foundations of the Modern Administrative State

1. Colleen Flood, "An Introduction to (the Effervescence of) Administrative Law", in Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008, Emond Montgomery Publications Limited, Toronto), CB I., pp. 1-23

CLASS #3 - TUESDAY, JANUARY 13

II. The Duty of Fairness

A. Evolution of the Duty of Fairness

1. *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I., pp. 24-31
2. *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I., pp. 32-38
3. *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I., pp. 39-49

CLASS #4 - THURSDAY, JANUARY 15

B. The Duty of Fairness - The Modern Expression

(a) Common Law

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I., pp. 50-70

(b) Charter

1. *Suresh v. Canada (Minister of Citizenship and Immigration)*, (2002), 208 D.L.R. (4th) 1, paras. 113-128, CB I., pp. 71-77

CLASS #5 - TUESDAY, JANUARY 20

III. Threshold – When Does the Duty Arise?

A. Decisions Affecting Rights/Privileges/Interests

1. *Re Webb and Ontario Housing Corporation* (1978), 22 O.R. (2d) 257 (C.A.), 93 D.L.R. (3d) 187, CB I., pp. 78-84
2. *Re Collins et. al. and Pension Commission of Ontario et. al.* (1986), 56 O.R. (2d) 274 (Div. Ct.), CB I., pp. 85-92

B. No Fairness Duty: General Policy /Legislative Decision-Making

1. *Mullan*, pp. 147-152, CB I., pp. 93-96
2. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.), CB I., pp. 97-106
3. *Authorson v. Canada (Attorney General)*, 2003 S.C.C. 39, 227 D.L.R. (4th) 385, CB I., pp. 107-115

CLASS #6 - THURSDAY, JANUARY 22

C. Investigating/Advising/Recommending

1. *Mullan*, pp. 166-170, CB I., pp. 116-120
2. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I., pp. 121-131
3. *Masters v. Ontario* (1994), 18 O.R. (3d) 551 (Div. Ct.), 115 D.L.R. (4th) 319, CB I., pp. 132-153

D. Domestic Affairs of Private Associations

1. *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] S.C.R. 165; 97 D.L.R. (4th) 17, CB I., pp. 154-159

CLASS #7 - TUESDAY, JANUARY 27

E. Applications for Benefits/Licences

1. *Hutfield v. Board of Fort Saskatchewan General Hospital District No. 98* (1986), 24 Admin. L.R. 250 (Alta. Q.B.), CB I., pp. 160-176
2. *Toronto Independent Dance Enterprise v. Canada Council*, [1989] 3 F.C. 516, 60 D.L.R. (4th) 503 (T.D.), CB I., pp. 177-182

3. *Comeau's Seafood Ltd. v. Canada*, [1997] 1 S.C.R. 12, CB I., pp. 183-189
4. *Everett v. Canada (Minister of Fisheries and Oceans)* (1994), 169 N.R. 100 (F.C.A.), CB I., pp. 190-194

CLASS #8 - THURSDAY, JANUARY 29

IV. Sources of Procedural Fairness: Statutes, Regulations, Procedural Codes, Policies & Rules

A. Statutes and Regulations

1. *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended, CB I., pp. 195-218
2. *Code of Behaviour on Academic Matters* (August 18, 1995), CB I., pp. 219-233

CLASS #9 - TUESDAY, FEBRUARY 3

B. Policies and Rules

1. Mullan, pp. 675-679 & 684, CB I., pp. 234-239
2. *Capital Cities v. CRTC*, [1978] 2 S.C.R. 141, CB I., pp. 240-245
3. *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.), CB I., pp. 246-249
4. *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, [2007] F.C.J. No. 734, CB I., pp. 250-269
5. *Social Benefits Tribunal – Practice Directions 2 and 3*, CB I., pp. 270-271

CLASS #10 - THURSDAY, FEBRUARY 5

C. Procedural Codes: Statutory Powers Procedure Act

1. *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB II., pp. 272-292

CLASS #11 - TUESDAY, FEBRUARY 10

V. Procedural Rights – Elements of the Duty of Fairness

A. Hearing Stage – Oral Hearings, Public Hearings

1. *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB II., pp. 293-304

2. *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4th) 280 (FCA) , CB II., pp. 305-311

B. Legitimate Expectations

1. *Mullan*, pp. 183-203, CB II., pp. 312-322
2. *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB II., pp. 323-334
3. *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, paras. 53-64, CB II., pp. 335-340

CLASS #12 - THURSDAY, FEBRUARY 12

C. Notice and Scope of Hearing:

1. *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4th) 471, CB II., pp. 341-345
2. *Henderson v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 2213 (C.A.), CB II., pp. 346-352
3. *Wong v. College of Traditional Chinese Medical Practitioners and Acupuncturists of British Columbia*, [2005] B.C.J. No. 2219 (C.A.) , CB II., pp. 353-360
4. *Canada (CRTC) v. CTV Television Network*, [1982] 1 S.C.R. 530, (p. 2, 12-13), CB II., pp. 361-363
5. *SPPA*, ss. 6, 7 and 8, CB I., pp. 272-292

D. Disclosure and Discovery

1. *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4th) 1, CB II., pp. 364-370
2. *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4th) 1, CB II., pp. 371-373
3. *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.), CB II., pp. 374-383
4. *May v. Ferndale Institution*, [2005] 3 S.C.R., 809, paras. 89-120, CB II., pp. 384-389

READING WEEK
February 16-20

CLASS #13 - TUESDAY, FEBRUARY 24

E. Right to Counsel and Cross-Examination

1. *Mullan*, pp. 456-462, CB II., pp. 390-393
2. *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053; 101 D.L.R. (4th) 654, CB II., pp. 394-398
3. *Egglestone v. Ontario (Advisory Review Board)* (1983), 150 D.L.R. (3d) 86 (Ont. Div. Ct.) , CB II., pp. 399-408

F. Decision on the Record and Reasons

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I., pp. 50-70
2. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II., pp. 409-414
3. *Gray v. Ontario (Disability Support Program, Director)*, [2002] O.J. No. 1531, 59 O.R. (3d) 364 (C.A.) , CB II., pp. 415-419

CLASS #14 - THURSDAY, FEBRUARY 26

VI. Bias

A. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

1. *R. v. Valente* (1985), 24 D.L.R. (4th) 161 (S.C.C.), CB II., pp. 420-436
2. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385 (S.C.C.), CB II., pp. 437-444
3. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4th) 289, CB II., pp. 445-453
4. *Baker*, pp. 220-223, para. 45-50, CB I., pp. 50-70

CLASS #15 - TUESDAY, MARCH 3

B. Tribunal Impartiality and Independence

1. *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America, Local 2-69*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II., pp. 454-470
2. *CUPE v. Minister of Labour*, [2003] 1 S.C.R. 539 SCC 29, CB II., pp. 471-496

CLASS #16 - THURSDAY, MARCH 5

C. Structural Independence

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II., pp. 497-516
2. *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB II., pp. 517-526

CLASS #17 - TUESDAY, MARCH 10

VII. Tribunal Jurisdiction - Constitution and Human Rights Codes

1. *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB II., pp. 527-542
2. *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; 231 D.L.R. (4th) 449, CB II., pp. 543-554
3. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB II., pp. 555-570

CLASS #18 - THURSDAY, MARCH 12

VIII. Statutory Appeals and Judicial Review: Overview

1. *ODSPA*, s.31, CB I., pp. 195-218
2. *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III., pp. 571-573
3. *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III., pp. 574-577

CLASS #19 - TUESDAY, MARCH 17

IX. Standard of Review

A. The Modern Approach

1. *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] S.C.R., 223 D.L.R. (4th) 599, CB III., pp. 578-587
2. *Ryan v. Law Society of New Brunswick*, [2003] 1 S.C.R. 247; 223 D.L.R. (4th) 577, CB III., pp. 588-599

CLASS #20 - THURSDAY, MARCH 19

1. *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB III., pp. 600-661

CLASS #21 - TUESDAY, MARCH 24

B. Discretion and Justiciability

1. Mullan, pp. 951-953, CB III., pp. 662-664
2. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III., pp. 665-675
3. *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.) , CB III., pp. 676-685
4. *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III., pp. 686-706

CLASS #22 - THURSDAY, MARCH 26

C. Parties and Standing

1. *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III., pp. 707-715
2. *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III., pp. 716-726
3. *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.) , CB III., pp. 727-735
4. *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.) , CB III., pp. 736-741

CLASS #23 - TUESDAY, MARCH 31

D. Exhaustion of Alternative Remedies/Prematurity

1. *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III., pp. 742-762
2. *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II., pp. 497-516

E. Collateral Attacks

1. *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III., pp. 763-776

CLASS #24 - THURSDAY, APRIL 2

F. Remedies

1. *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.), CB III., pp. 777-784
2. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III., pp. 785-791
3. *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III., pp. 792-803

CLASS #25 - TUESDAY, APRIL 7

Exam Review